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Clinical Legal Education and Academic Freedom

*Brian Gilmore**

Stanley Fish's analysis of academic freedom for those of us who teach in clinical legal education creates all kinds of challenges and scenarios. Most of all, Fish's thesis exposes the undefined area where clinicians (as we call ourselves in the trade) continue to exist today as academics. It begs me to ask: do we need to expand and/or reconfigure the very notion of "academic freedom" even more as opposed to seeking a specific and limiting definition (no matter what, there will be limits)?

At the outset, it should be noted I teach in a clinical program at a law school. Clinicians such as myself teach in a changing environment of legal education where experiential learning in law school, of which clinical teaching is a key component, is becoming a more important part of legal education.¹ The traditional method of preparing lawyers for practice in the field of law – the Langdellian case method² - is incompatible with the future of the legal profession. The caretakers of the profession are urging for legal training of students that focuses more on actual lawyer skills training for law students in law school. Resistance to this shift is fierce.

Perhaps this explains why clinical education, and clinical law professors in particular, are not necessarily treated by their respective law colleges in a manner consistent with their growing importance to the trade's immediate future. Many clinical law professors are unable to obtain full tenure, although job security is now becoming achievable to more clinicians. Also, clinical law teachers are still experiencing difficulties obtaining equal status (rights, some call it) within academic governance structures. This equal status in institutional affairs as teachers in an academic setting is something that was mentioned by Professor Fish (within the context of academic freedom).³ The unique nature of legal clinicians as practicing attorneys who teach, supervise, write, research, and perform public and community service creates this problem because clinicians

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¹ Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 309 (2012), available at <http://lawdigitalcommons.bc.edu/jlsj/vol32/iss2/5>.

² DAVID HIRSCH & DAN VAN HAFTEN, ABRAHAM LINCOLN AND THE STRUCTURE OF REASON 18 (2010).

³ STANLEY FISH, VERSIONS OF ACADEMIC FREEDOM: FROM PROFESSIONALISM TO REVOLUTION (forthcoming 2014) (manuscript at 5) (on file with FIU Law Review).

represent a key part of the future of legal education but are currently not uniformly afforded a equal or even shared weight of influence in institutional decisions as the doctrinal faculty.

Yet, taking this into account, clinicians have much to add to Professor Fish's thesis. For one, the very nature of much of clinical work can be highly political in nature, and that is probably necessary. Law clinics operate outside of the law colleges and are subject to the judgment and scrutiny of the various communities in which they function.

The law clinic I direct represents consumers in the Michigan courts in various housing matters. We represent low-income consumers and tenants much of the time. Oftentimes, our clients are unemployed, ex-offenders, mentally disabled, challenged educationally, or some combination of several of these categories. We interact with government staff, elected leaders, and various civic organizations in various parts of the state in attempting to accomplish our goals. Michigan, like many states, is pro-business in its judicial culture. Judges (elected), public officials, and local business owners, frequently frown upon our work. It is, therefore, quite difficult to not consider one's work (the teaching) a crusade, at least in the limited context of our cases and advocacy projects.

The University of Maryland Law School's Environmental Clinic sued Perdue Chicken for polluting the Pocomoke River in Maryland in violation of environmental laws in 2010. Members of the Maryland state legislature then threatened to withhold school funding for the clinic because of the lawsuit. Professor Rena Steinzor, Director of the clinic, stated the following of that dispute:

The clinics represent people or groups that can't otherwise afford lawyers and by definition, this work often puts the clinics on the opposite side of the government or powerful interests.⁴

Should that clinic have been forced to pursue a pro-business, accommodating approach to its teaching and advocacy work in achieving its goals?

In other words, the challenges presented by academic freedom as described by Professor Fish strongly suggest that a more inclusive, flexible academic freedom model is best for academia. Clinical legal education presents a unique teaching model that expands accepted norms and begs for inclusion, not limitations.

⁴ Ian Urbina, *School Law Clinics Face a Backlash*, N.Y. TIMES, Apr. 5, 2010, at A12.